

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF NEW JERSEY

4
5 IN RE: VALSARTAN, LOSARTAN,
6 AND IRBESARTAN PRODUCTS
7 LIABILITY LITIGATION
8
9 CIVIL ACTION NUMBER:
10 1:19-md-02875-RBK-KW
11 CASE MANAGEMENT CONFERENCE
12 (Via teleconference)

13 Wednesday, July 28, 2021
14 Commencing at 10:00 a.m.

15
16 B E F O R E: SPECIAL MASTER,
17 THE HONORABLE THOMAS I. VANASKIE
18 (Page 27) THE HONORABLE ROBERT B. KUGLER,
19 UNITED STATES DISTRICT JUDGE

20
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1 **A P P E A R A N C E S: - CONTINUED**

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1 (ALL PARTIES VIA TELECONFERENCE; JULY 28, 2021; 10:00
2 A.M.)

3 THE COURT: All right. The beeping in has slowed
4 down. Maybe it hasn't slowed down.

5 And do we have Karen on the line?

6 THE COURT REPORTER: Yes, Judge.

7 THE COURT: Thank you, thank you, Karen. That's
8 Karen Friedlander, our court reporter for today, and I think
9 we can get started now.

10 I have received your agenda letters, and the first
11 item on the agenda I wanted to take up is this -- the briefing
12 on the confidentiality designations, and there's a -- as a
13 good late friend of mine would say, a kerfuffle over whether a
14 brief should be accepted.

15 Who will be addressing that issue on behalf of the
16 plaintiffs?

17 MR. SLATER: Good morning, Your Honor, Adam Slater
18 for the plaintiffs.

19 THE COURT: All right. What's this all about, Mr.
20 Slater?

21 MR. SLATER: Kerfuffle.

22 (Laughter.)

23 MR. SLATER: We actually don't think there's an
24 issue, and our position is that the -- that the issue has been
25 briefed. I think the letters are pretty clear what happened.

1 So we filed our brief two days late. We acknowledge that. We
2 agreed to a two-day extension for the defense as a
3 consequence, which was confirmed with Your Honor, and that was
4 it.

5 And it seems from the briefing that we got -- or the
6 letter we got after we filed our request to reply -- which our
7 request to reply was only limited to that issue, it seems like
8 ZHP doesn't really object at this point, and they even said in
9 their letter to the Court it seems like they're saying the
10 issue is briefed and there are two briefs on file, our brief
11 and theirs, and it can be decided and we agree with that.

12 THE COURT: Okay, good. Who's addressing this for
13 ZHP today?

14 MS. PRISELAC: Good morning, Your Honor, this is
15 Jessica Priselac for the ZHP parties and the defendants.
16 Various members of the defense group are going to handle the
17 discrete issues that were in our letter to the Court. And my
18 colleague Kelly Bonner will be handling this issue for the ZHP
19 parties.

20 THE COURT: All right. Thank you.

21 MS. BONNER: Good morning.

22 THE COURT: Ms. Bonner?

23 MS. BONNER: Yes, good morning. The ZHP parties
24 respectfully believe that, yes, this issue has been briefed
25 and they believe that plaintiffs did file their brief late.

1 Your order was very clear that their brief regarding waiver
2 allegations was due no later than July 14th. They filed their
3 -- plaintiffs didn't file their brief on July 14th, they filed
4 it on July 16th. They did so without seeking consent from the
5 ZHP parties or the Court before filing their brief out of
6 time.

7 It's not for the ZHP parties to determine whether to
8 excuse plaintiffs' delay. That's a matter for the Court to
9 decide under Federal Rule of Civil Procedure 6(b)(1)(B) and
10 the Court's inherent authority to manage its docket. And it
11 requires a showing of an excusable neglect, which plaintiffs
12 haven't made.

13 The ZHP parties did not consent to plaintiffs' late
14 filing because they requested a two-day extension for their
15 opposition. They requested that extension after plaintiffs
16 filed their brief on July 16th. At that point, that's when
17 your Special Master order 31 was still in effect and
18 plaintiffs -- and the ZHP parties respond. The deadline for
19 the ZHP parties' response hadn't moved, so that request was
20 simply to preserve the ZHP's parties' right to have six days
21 to respond to the merits of plaintiffs' brief as provided in
22 Your Honor's order and to restore an even playing field.
23 That's why we made that request.

24 It's not -- it wasn't to consent, it was simply to --
25 it was simply to preserve an even playing field and our

1 ability to respond in the amount of time provided by Your
2 Honor's order.

3 Now, we acknowledge that if Your Honor wishes to
4 permit plaintiffs to file a reply brief, then the ZHP parties
5 would respectfully request that that brief be limited solely
6 to the issue of plaintiffs' late filing.

7 THE COURT: All right. Anything else on this issue,
8 Mr. Slater?

9 MR. SLATER: No, Your Honor.

10 THE COURT: Yeah, I'll treat the submission that was
11 made to me in connection with the agenda letter and the
12 submission that was made by plaintiffs' counsel on this issue
13 as a request to accept the brief, even though it was filed two
14 days late, and we'll accept it, and there will be no further
15 briefing on this issue, then, no need for a reply brief,
16 because it would be limited to the question of whether to
17 accept the late-filed brief.

18 I would caution counsel to confer. You know, it's
19 going to be unavoidable for there to be some inability to meet
20 the tight deadlines that have been established in this matter.
21 When that happens, though, there should be a request of
22 opposing counsel to consent to the late filing so that we can
23 avoid these kerfuffles. But under the circumstances, the
24 briefs having been prepared and submitted, ZHP has been given
25 a full opportunity to respond to that brief, we'll accept the

1 brief, consider the matter ripe, and we'll issue a decision
2 promptly on this matter.

3 All right. Let's move to the next issue on the
4 agenda letters, and that is the Hetero privileged documents,
5 documents withheld under claim of privilege.

6 I've got two different estimates of -- I shouldn't
7 say estimates, two different counts of the number of documents
8 at issue. Plaintiffs peg it at 20 documents, defense, Hetero,
9 at 26 documents. So the first thing I wanted to clarify is
10 how many documents are we talking about here? And who will be
11 addressing this for Hetero?

12 MR. SHAH: Good morning, Your Honor, this is Nakul
13 Shah on behalf of Hetero Labs and Hetero Drugs.

14 THE COURT: Good morning, Mr. Shah. So how many
15 documents are there?

16 MR. SHAH: Your Honor, at my count, I had 26
17 documents that were at issue. I do notice that plaintiffs
18 stated 20 documents that were disputed, but in any event,
19 plaintiffs and defendants are in agreement that an in-camera
20 inspection is likely the best course of action in order to
21 resolve this dispute. It seems that we are at an impasse
22 presently.

23 We can confer with plaintiffs to ensure what the
24 correct number is. I presently have my count at 26.

25 THE COURT: All right. If you'll straighten that

1 out, the plaintiffs did identify by line number in the
2 privilege log the documents that they are requesting an
3 in-camera review of, and aside from this discrepancy, 20
4 versus 26, how quickly can the documents be provided for an
5 in-camera review?

6 MR. SHAH: Within a couple of days, Your Honor, or
7 one week if that would work for Your Honor, with just explicit
8 instructions on how precisely Your Honor would like us to
9 transmit those documents to Court.

10 THE COURT: All right. Is there a problem having
11 them transmitted to me by email?

12 MR. SHAH: No, Your Honor. We can transmit them in
13 pdf form by email.

14 THE COURT: All right. And you can do it in a secure
15 way, I take it?

16 MR. SHAH: Yes, Your Honor.

17 THE COURT: And I would suggest, I want to make sure
18 this is -- I think we can do it this way.

19 You can email it to me at my Stevens & Lee address.

20 MR. SHAH: Will do, Your Honor.

21 THE COURT: Thomas.vanaskie@stevenslee.com. And I'll
22 ask that you have them to me within one week of today.

23 You know, so I'd look at the privilege log. Is there
24 additional submissions that counsel want to make in connection
25 with my in-camera review?

1 First on the plaintiffs' side, is there anything
2 else?

3 MR. PAREKH: Your Honor. Good morning, Your Honor.

4 MR. SLATER: You're on Behram, go ahead.

5 MR. PAREKH: Good morning, Your Honor, just to
6 quickly clarify the 26 versus 20, we had originally challenged
7 26 to Hetero, but we were only asking the Court to review 20.
8 We've withdrawn our challenges to the other six, and there's
9 20 that are identified being the submissions to Your Honor.

10 As to additional briefing, I think, you know, unless
11 Your Honor requires, I think the documents should be pretty
12 clear on their face as to why we believe that -- and we've
13 also stated in the privilege log why we believe that we
14 challenged them, but we're happy to submit something at the
15 same time that Hetero submits the documents in camera
16 explaining our rationale.

17 THE COURT: I don't think that's necessary, based
18 upon what you've said to me just now. I'm not looking to
19 require additional work of you all. I just want to know that
20 when I get the documents, I receive the documents, that it's a
21 matter that's ripe for my review, that there's no need for any
22 additional presentation by counsel.

23 MR. PAREKH: Just because it's limited to the 20
24 documents, that we will submit a very brief statement as to
25 each document and why we believe that it's not privileged just

1 as to -- you're not hunting through the privilege log for
2 random things.

3 THE COURT: And who just spoke now?

4 MR. PAREKH: I'm sorry, Behram Parekh, Your Honor,
5 for plaintiffs.

6 THE COURT: Mr. Parekh, yeah, for plaintiffs.

7 And, Mr. Shah, what's your view?

8 MR. SHAH: Well, Your Honor, in the event that
9 plaintiffs provide a brief statement, we ask that we similarly
10 be entitled to submit a brief statement along with the
11 transmission of the documents.

12 THE COURT: All right. You can submit that brief
13 statement and, Mr. Parekh, you know what the 20 documents are,
14 they're listed in the agenda letter, so you can submit your
15 letter statement at any time between now and next Wednesday
16 when I expect I'll be receiving the documents themselves. All
17 right?

18 MR. PAREKH: We will do so, Your Honor, thank you.

19 THE COURT: Okay. Great. Thank you.

20 MR. PAREKH: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 The next item I had were the retail and wholesaler
23 defendants' 30(b)(6) deposition notices, and that's -- I don't
24 think there's a need for any action on our part at this time.
25 Is that correct, Mr. Slater?

1 MR. SLATER: Your Honor, I don't believe there's
2 anything else to talk about on that. Mr. Stanoch if he wants,
3 he can address that more specifically but I don't believe
4 there's anything else to do today.

5 MR. STANOCH: Good morning, Your Honor, David Stanoch
6 for plaintiffs. Mr. Slater is correct, nothing at this time,
7 but as the parties informed Your Honor, we can't have
8 everything worked out by this Friday, we will request an
9 off-cycle conference with Your Honor to address succinctly any
10 lingering disputes.

11 THE COURT: All right. Very well. Who's addressing
12 this for the defendants?

13 MS. JOHNSTON: Your Honor, Sarah Johnston on behalf
14 of the pharmacy defendants. We agree with Mr. Stanoch and
15 we're continuing to work together. If there are any issues
16 that we'd like Your Honor to address, we will notify the
17 Court.

18 THE COURT: I'm sorry. Thank you.

19 MS. JOHNSTON: Thank you.

20 THE COURT: And for the wholesaler defendants?

21 MR. GEOPPINGER: Good morning, Your Honor, Jeff
22 Geoppinger on behalf of the wholesaler defendants. We agree
23 with Mr. Stanoch, if we have anything to add, we will contact
24 you if need be.

25 THE COURT: Great. The next item I have deals with

1 the expert reports. There are two separate items. The one is
2 the expert report that came -- and I'll probably mispronounce
3 the name -- the Parafinczuk Wolf law firm. And who will be
4 addressing this issue on behalf of the defendants?

5 MS. LOCKARD: Good morning, Judge Vanaskie, it's
6 Victoria Lockard from Greenberg Traurig. I will be addressing
7 this for defendants today.

8 THE COURT: Okay. All right. And who will address
9 this issue for the plaintiffs?

10 MR. SLATER: Hello, Your Honor, it's Adam Slater and
11 I would also think that Mr. Parafinczuk will also address
12 this, as needed, as well.

13 THE COURT: Okay. Good. Well, maybe we should hear
14 from plaintiffs first. I mean, this is a little bit unusual,
15 because it's the expert reports from one law firm. As I
16 understand it, it does deal with the question of causation of
17 cancer. I obviously don't have your reports and so I don't
18 have any clue in terms of how they relate to the reports, the
19 other reports that have been filed, but Mr. Parafinczuk, maybe
20 -- and maybe I'm getting too far ahead on this. Is this a
21 matter that can be resolved by extension of some deadlines, or
22 how can this matter be resolved?

23 MR. SLATER: Your Honor, it's Adam Slater. If I
24 could respond first and I could hand off because --

25 THE COURT: Sure.

1 MR. SLATER: -- this obviously affects all of us.
2 From the position of the steering committee and the
3 plaintiffs' leadership, the one thing that we cannot agree to
4 and will absolutely oppose is any extension for any general
5 causation reports from the defense beyond the deadline,
6 because our experts are getting ready to be deposed and they
7 need to know what opinions the defense experts have with
8 regard to any and all issues before they are deposed, and
9 that's how the schedule was set up.

10 So that -- extending the deadline to push the two
11 weeks that the defense requested would push those reports out
12 beyond the deposition to at least two of plaintiffs' general
13 causation experts, which would be very prejudicial.

14 On the merits, without getting too deep, because I
15 don't think we really need to, these are general causation
16 expert reports. There's no order that precluded the law firm
17 from filing their two reports or serving their two reports.
18 There's nothing that's pointed to in the letter that said they
19 couldn't. The defense says they expected that only the
20 plaintiffs' leadership would serve the reports. For all they
21 knew, we were going to serve 27 reports.

22 So the fact that two more were served and they had
23 them in their hands doesn't really change anything from their
24 perspective, and we don't have the ability, the authority, or
25 any other right to stop a law firm that's within this

1 litigation from serving general causation reports within the
2 -- within the Court's order.

3 So from our perspective, there's nothing that can be
4 done to stop a law firm who wants to proceed if they got their
5 own experts for general causation, for whatever reason, I
6 don't think there's anything that stopped them from doing it,
7 and again, we vehemently -- I use that word sparingly, but we
8 recently opposed any extension because it would be very
9 prejudicial to our preparation of our experts.

10 THE COURT: But had there not been an identification
11 of likely experts in advance of the production of your report?

12 MR. SLATER: Not the names of experts. There was
13 identification of the cancers earlier this year.

14 THE COURT: Okay.

15 MR. SLATER: And that was it.

16 THE COURT: Okay. Ms. Lockard, you're dealing with
17 this issue?

18 MS. LOCKARD: Yes, Your Honor, if I may. So if we
19 just take a step back here, you know, this entire litigation
20 was centralized in an MDL for the express purpose of
21 streamlining and centralizing the common discovery in the
22 case. It was never the intention that individual plaintiff
23 attorneys in this MDL, outside of the PEC, would submit expert
24 reports. Mr. Parafinczuk has, I believe, somewhere around
25 less than a dozen cases in the MDL that actually name a

1 manufacturer. He has a number of John Doe cases where there's
2 not even a manufacturer name. But it's a very subset --
3 limited subset of cases that these reports even apply to.

4 You know, I don't think that, you know, the intent
5 behind Judge Kugler's scheduling order and as we quoted in our
6 submissions, you know, his comments regarding how this was to
7 proceed wholly anticipated that this would be coordinated and
8 centralized through the plaintiffs' executive committee. You
9 know, when we tried to meet and confer on this, we tried to
10 come up with some various proposals as to how we could deal
11 with this.

12 You know, we did not propose that those experts be
13 totally stricken or barred. We talked about a potential
14 extension that would help, or putting these on a separate
15 track, or dealing with these, you know, case-specific expert
16 for the Parafinczuk cases on the, you know, at a later phase
17 when we're talking about specific discovery.

18 But, you know, it just was never intended that these
19 experts would be pulled into the PEC expert numbers.

20 When we met and conferred on this, you know, we
21 raised the issue that, you know, in addition they're
22 duplicative, you know, and there appeared to be no
23 coordination between the Parafinczuk firm and plaintiffs'
24 counsel. You know, the plaintiffs' executive committee
25 leadership, if they hadn't even read the Kumar and Bird

1 reports at the time of our meet and confer. So it's clear
2 that this is just, you know, proceeding as sort of -- in
3 isolation in a silo, and that's fine, but it doesn't need to
4 be a part of this phase.

5 For this phase, based on the way Judge Kugler
6 envisioned and we have always discussed, that we are to
7 prepare for the plaintiffs' executives committee's expert.
8 You know, Mr. Slater sent a report to the Court identifying
9 those five, you know, provided their experts to the Court. We
10 have scheduled the depositions of those five. We are ready to
11 proceed. We're not trying to delay those five.

12 But I think peeling off these extraneous reports that
13 only apply to certain cases is what really needs to happen
14 here. So we're really asking for the Court's guidance on
15 this. You know, if it's an extension for the Kumar and Bird
16 report, you know, or we put them in a separate phase, you
17 know, we're open to whatever would be the most efficient
18 handling but we don't think we should, you know, spend time
19 and resources diverted to these experts that only apply to
20 less than a dozen cases.

21 MR. SLATER: Your Honor, it's Adam Slater. I just
22 wanted to comment on the last thing counsel said. These are
23 general causation reports that were served by a law firm. I'm
24 not sure why the defense is saying that they'd only be
25 applicable to that firm's cases. I would suppose that if

1 other plaintiffs were to have a case that was moving through
2 discovery towards a trial and wanted to use those experts, I
3 don't see why they wouldn't be allowed to if they worked it
4 out. It doesn't make any sense to me why counsel keeps saying
5 the experts would not be available to other plaintiffs.
6 Whether or not they will be used by their plaintiffs, I have
7 no idea, but I don't know where they got the idea that they're
8 limited only to their clients. I suppose another client could
9 use those experts as well.

10 MS. LOCKARD: There is a Rule 26 disclosure
11 requirement, Your Honor, and, you know, parties are required
12 to disclose the experts they intend to use. No plaintiffs'
13 expert in this litigation has disclosed these two experts,
14 other than the Parafinczuk firm. That's why we interpret
15 these as being only applicable to the Parafinczuk firm.
16 There's been no disclosure by any other plaintiffs' counsel in
17 this case for Kumar and Bird.

18 THE COURT: Maybe I should hear from Mr. Parafinczuk.

19 MR. SLATER: Your Honor, I actually don't know if
20 he's on. I got an email a few moments ago that said he was
21 not on the line, which I thought he was going to be on, but he
22 is not on the line, apparently, so I'm the best that you've
23 got today.

24 THE COURT: But I was hoping to hear from Mr.
25 Parafinczuk. Sorry, Mr. Slater.

1 MR. SLATER: I do know from discussions with him that
2 his position is consistent with ours. He wants to proceed.
3 His information was sent to the defense. There's no reason
4 why the deadline should be different. There's no order that
5 says they couldn't do it, and I don't think that anybody could
6 really stop them from doing it. Certainly, we couldn't.

7 MS. LOCKARD: Well, and when Mr. Parafinczuk
8 disclosed these experts, he specifically stated they were
9 being disclosed on behalf of his clients.

10 So, you know, I just think that this is, you know,
11 fairly straightforward in dealing and separating the
12 Parafinczuk experts from the main five.

13 I understand the predicament that plaintiffs'
14 executive committee is in. I don't expect them to willingly,
15 you know, you know, voluntarily, you know, push these experts
16 aside. I think this is really an issue with the Parafinczuk
17 firm and not with plaintiffs' executive committee, and we
18 tried to meet and confer with Mr. Parafinczuk on that. He was
19 the one who declined any sort of proposal of an extension, and
20 really didn't come back with any other solution, other than,
21 you know, go depose my expert.

22 THE COURT: Yeah. My inclination is to separate this
23 out from the others.

24 I hear what you're saying, Mr. Slater, that these are
25 a couple of general causation experts, but it just seems to me

1 that this would be a matter that should be handled separately.

2 I'm a little bit -- I'm concerned. Obviously, I'm
3 struggling with this. I'm struggling with this because I know
4 you're moving to motion practice on these matters, either
5 *Daubert* motions or summary judgment motions, and they need to
6 be resolved as well.

7 But now requiring the defense to respond to two more
8 expert reports within the deadlines that have been set seems
9 to me to be -- and, you know, I'm just imagining, this is one
10 plaintiff's law firm that has obtained its own expert
11 witnesses. What if there were more? Now, there isn't, but to
12 what extent would it become unmanageable.

13 That's why you have a plaintiffs' executive committee
14 and that's why you anticipate that it will be coordinated
15 through the executive committee. And they know we're under
16 tight deadlines here, too.

17 When are the responsive expert reports due?

18 MR. SLATER: That's Monday, Your Honor.

19 THE COURT: Yeah, Monday, August 2nd.

20 Now, let me see if I understand. The expert witness
21 reports sent by the plaintiffs' executive committee are
22 general causation and cover the -- cover all of the cases;
23 they cover the waterfront of plaintiffs' cases. The expert
24 witness reports by the Parafinczuk law firm are general
25 causation, but they've been represented as pertaining to the

1 plaintiffs they represent. Is that right?

2 MS. LOCKARD: Correct.

3 MR. SLATER: I think the disclosure letter said that,
4 because I think that's all that firm could say. All I'm
5 saying is, as a matter of reality, if any other plaintiff
6 wanted to avail themselves to those experts, I don't see how
7 that would be precluded.

8 MS. LOCKARD: I believe it would be, by the deadline
9 that has passed to disclose experts on their behalf.

10 I mean, there must be some meaning to these expert
11 deadlines, Your Honor. I mean, the deadline for plaintiffs to
12 disclose their general causation expert came and went. No one
13 else has disclosed Kumar and Bird, other than the Parafinczuk
14 firm, and his disclosure specifically limited that disclosure
15 to his cases, which are less than a dozen.

16 THE COURT: And this is difficult to resolve because
17 it's really the Parafinczuk law firm that should be heard on
18 this matter, I think. And we don't have them on the call and
19 we've got a very tight deadline right now.

20 I think under these circumstances, the only thing I
21 can do is say that these would be treated as experts on
22 specific causation, specific to the clients being represented
23 by the Parafinczuk law firm, and not -- and that way we keep
24 everything else intact.

25 Is that acceptable, Ms. Lockard, for the defense?

1 MS. LOCKARD: Yes, that is acceptable, Your Honor.
2 It seems to be the fairest approach.

3 THE COURT: And no one else has designated -- no
4 other plaintiffs, I take it, no other plaintiffs' counsel has
5 designated these two experts as expert witnesses in support of
6 their causation theories, is that right, Mr. Slater?

7 MR. SLATER: To my knowledge, no other firm did and,
8 yes -- the answer is, yes, I don't believe anyone else has. I
9 think most of the firms probably don't know about the reports
10 or weren't aware, and there is obviously cases that are still
11 being filed. I suppose those people are potentially true;
12 name those experts.

13 THE COURT: In order to keep our schedule intact, we
14 have to treat these as experts we'll deal with in the specific
15 causation phase of the case and not require response by Monday
16 to those expert witness reports and deal with them separately.
17 This way we can keep the case moving forward.

18 MR. SLATER: Understood, Your Honor. Thank you.

19 THE COURT: All right. Is that sufficient guidance,
20 Ms. Lockard?

21 MS. LOCKARD: Yes, Your Honor, I think that covers
22 that issue.

23 THE COURT: All right.

24 MS. LOCKARD: And, you know, on the third expert, I
25 think it's a little of the same, but even a bit more removed

1 because, you know, whereas those Kumar and Bird, the
2 Parafinczuk experts, they did have opinions regarding cancer,
3 and cancer, you know, obviously is the injury that was
4 disclosed by plaintiffs as being at issue in the general
5 causation question.

6 The Danny Colon case and the third expert, it applies
7 to opinions related to whether the impurity in the medication
8 caused ALS, Lou Gehrig syndrome, and, you know, we're not --
9 we haven't even come to general, you know, position as to
10 whether that case really even belongs in this MDL or not. You
11 know, we're not asking to sever that from the MDL, we're not
12 asking really to do much with it, other than to treat it as
13 you just, you know, advised for Kumar and Bird, which is just
14 to put it on a specific discovery track and to deal with it
15 after the general causation of cancer has been addressed by
16 the Court.

17 THE COURT: Yeah, do you want to respond on that
18 issue, Mr. Slater?

19 MR. SLATER: I'll be very brief. I think that your
20 prior ruling -- I'm going to try to be a realist. I would
21 think that you probably would apply the same ruling, so I'm
22 not going to make you listen to the same arguments.

23 THE COURT: Okay. And I think this is different,
24 too, but I think this is an easier, easier one to say deal
25 with it in a specific causation phase of the case, since from

1 everything I've been presented with, there is only one ALS
2 plaintiff in this matter so far.

3 And so that, we can defer to the specific causation
4 phase of the case. All right?

5 The next issue we have is a true kerfuffle, and that
6 deals with the page limits on defendants' sur-reply, on the
7 motion for leave to amend the Complaint, and we're dealing
8 with the request to extend the page limit, as I understand it,
9 from 15 pages to 18 pages per category of defendant, three
10 categories of defendants; is that correct?

11 And who's addressing this issue for the defendants?

12 MS. RICHER: Good morning, Your Honor, this is
13 Kristen Richer for the defendants.

14 THE COURT: All right. And so is that right, you're
15 looking at three additional pages per category of defendant.
16 Three defendants. So a total of 54 pages?

17 MS. RICHER: Yes, that is correct, it would be
18 18 pages maximum per brief.

19 You know, and that would amount to three extra pages
20 per brief and size 14, double-spaced font.

21 That, Your Honor, that's under the assumption that
22 the 15-page limit that remaining reply brief length is what
23 governs here. And I think we've been operating under the
24 assumption that it would, but, you know, that itself wasn't
25 specified by the Court's prior order regarding the

1 sur-replies.

2 THE COURT: Gotcha.

3 MS. RICHER: We did reach out to plaintiffs on Monday
4 evening to seek their consent on this. They have not
5 consented to the request. I know their opposition in their
6 letter brief highlights the timing of our request, and
7 candidly, I didn't think that a request for three pages of
8 briefing would be so controversial or require extensive meet
9 and confer, but I do understand that it was coming up on the
10 filing of our letter briefs. You know, the timing has most to
11 do with the fact that this really does represent our very good
12 faith attempt to evaluate what we thought we might need and to
13 ask for that and not more. We could, I suppose, have asked
14 for a larger rounder number earlier in the process, but we're
15 not insensitive to the fact that the briefing here has been
16 extensive and we wanted to be as conservative as possible on
17 our approach.

18 THE COURT: All right.

19 MS. RICHER: You know, given, given the number of
20 issues raised in the briefing, the number of parties involved
21 in the case, the number of class representatives and state
22 laws that we're dealing with, I do think this is a reasonable
23 request and it may be that some of these briefs actually come
24 in a bit under 18 pages at the end of the day, but given that
25 we're coming up on the filing deadline, we thought it best to

1 ask for what we thought we could need in as a conservative way
2 as possible now rather than deal with the scramble later in
3 the week before next week's filing deadline.

4 THE COURT: All right. Mr. Slater, do you want to
5 respond? Or who's responding for the plaintiffs?

6 MS. GOLDENBERG: Your Honor, this is Marlene
7 Goldenberg for the plaintiffs and I think we've now been
8 successful in using more pages of the transcript than the
9 defendants wanted to use in their briefs --

10 (Laughter.)

11 THE COURT: I'm sorry.

12 MS. GOLDENBERG: This is not one where we're here to
13 throw down, but, you know, we thought we were being generous
14 by giving the defendants the pages that are allowed under the
15 local rules for a reply brief, given the fact that this is
16 actually a sur-reply.

17 We just think that there's been enough ink spilled on
18 this issue and we think 15 pages is sufficient, but we'll
19 defer to Your Honor for your ruling.

20 THE COURT: You know, I once was excoriated by a
21 former colleague of mine on the Third Circuit when I granted a
22 pro se plaintiff's request for an extension of the page limits
23 of a brief. Actually, it resulted in a change of procedure
24 where those requests were centralized, but that was an extreme
25 case. It shows you that I generally granted the request and I

1 didn't please that colleague of mine of now blessed memory, by
2 deferring to the pro se plaintiff's request.

3 But in this instance, I'll risk the wrath of a judge
4 by saying I'll give you those three additional pages per reply
5 brief.

6 And so that request is granted, and ask, you know,
7 just to formalize it and a proposed order be submitted to me.

8 MS. GOLDENBERG: Will do, Your Honor. Thank you.

9 THE COURT: It left an indelible mark on me on being
10 too liberal and granting request for enlargement of pages.

11 But as I said, it was a calling out that I didn't
12 expect.

13 Is there anything else for us to address before we
14 try to get Judge Kugler on the phone?

15 MR. SLATER: I don't believe so for plaintiffs, Your
16 Honor.

17 MS. LOCKARD: Nothing for the defendants, Your Honor.
18 Nothing from the defendants, Your Honor.

19 THE COURT: Okay. I'm going to hang up. I'm going
20 to call in to Judge Kugler. He gave me a new number to call.
21 He's in Washington today. I have a number to call him and
22 then he'll be dialing in and I'll be rejoining you.

23 Thank you all very much and we'll be talking to you
24 again shortly. Bye.

25 (Pause; 10:39 a.m. to 10:43 a.m.)

1 JUDGE KUGLER: Good morning. It's Judge Kugler
2 joining the call. Hope everyone is well.

3 RESPONSE: Good morning, Your Honor.

4 JUDGE KUGLER: I assume you have a court reporter.
5 Karen?

6 THE COURT REPORTER: Yes, Judge, it's Karen. I'm
7 here.

8 Hi, Karen, how are you?

9 THE COURT REPORTER: Great. Thank you.

10 JUDGE KUGLER: Good, good.

11 All right. Well, we have a couple of matters to
12 discuss today about the orders to show cause. Apparently,
13 according to yesterday's letter, Ms. Cohen, the Stone matter
14 has been resolved, so that can be dismissed, correct? I mean,
15 the motion -- the order to show cause can be dismissed,
16 correct, Ms. Cohen?

17 MR. HARKINS: Good morning, Your Honor, this is Steve
18 Harkins with Greenberg Traurig. I'll be addressing this for
19 the defense, and that is correct with respect to the Stone
20 matter.

21 THE COURT: How about Pamela Stewart, Mr. Harkins? I
22 assume you haven't heard anything further about that?

23 MR. HARKINS: That's correct, Your Honor. At this
24 time, we request that that case be dismissed.

25 JUDGE KUGLER: Anybody want to speak on behalf of the

1 plaintiffs on the Pamela Stewart matter?

2 MS. GOLDENBERG: Your Honor, this is Marlene
3 Goldenberg for the plaintiffs. I'm not sure if counsel for
4 Pamela Stewart is on the call, but I will note that we, on the
5 PSC, got this list later than we usually do, and while we
6 reached out to counsel for that plaintiff, we haven't had a
7 chance to -- it hasn't even been 24 hours.

8 So with that said, I -- if Mr. Harkins can make
9 contact with them and that they know about this, that's one
10 thing, but I don't have that in writing from them right now.

11 JUDGE KUGLER: Well, he says he has it, just
12 communicated with them about this and got no response, so I'll
13 grant the motion to dismiss. Obviously, if things change, you
14 can always come back and we can reexamine it at a later time.

15 All right. The defendants are seeking orders to show
16 cause in the Cassandra Henton, H-E-N-T-O-N, and Worikeena,
17 W-O-R-I-K-E-E-N-A, Righteous matters. Any changes to that?

18 MR. HARKINS: Your Honor, no changes from the
19 defendants, Your Honor. We request orders to show cause
20 returnable at the August case management conference involving
21 these two cases.

22 JUDGE KUGLER: Anybody want to speak on behalf of
23 these plaintiffs?

24 Okay, then we'll list those for the next meeting in
25 August, letters to show cause why they shouldn't be dismissed.

1 Now, there are 13, which you want to shift to the
2 next listing:

3 Sandra Russell.

4 Laura Pina, P-I-N-A.

5 Emily Chambers.

6 Helen Orr, O-R-R.

7 Thomas Lloyd.

8 Lucinda Laughlin, L-A-U-G-H-L-I-N.

9 Billy Hupp, H-U-P-P.

10 Hector Rivera.

11 Burlia, B-U-R-L-I-A, Abdullahi, A-B-D-U-L-L-A-H-I.

12 The Estate of McClaskey, M-c, capital C-L-A-S-K-E-Y.

13 Marcia Ridley, R-I-D-L-E-Y.

14 Velma Hurst, H-U-R-S-T, and Debra Wright,
15 W-R-I-G-H-T.

16 Anybody from plaintiffs want to be heard on any of
17 these being shifted to the next listing?

18 MR. HARKINS: Your Honor, just one update from the
19 defendants. The Lucinda Laughlin case, Number 6 on the list,
20 has been resolved and we can remove that from the next agenda.

21 JUDGE KUGLER: Okay. Number 6, Lucinda Laughlin, is
22 removed.

23 All right. Then we have seven. You want a first
24 listing on -- these are people who didn't file fact sheets.

25 Shylaine, S-H-Y-L-A-I-N-E, Louissant,

1 L-O-U-I-S-S-A-N-T.

2 Abraham Agustin, A-G-U-S-T-I-N.

3 Robert Smith.

4 Benita, B-E-N-I-T-A, Smiley, S-M-I-L-E-Y.

5 Jimmy Thorn, T-H-O-R-N.

6 Daniel Craigie, C-R-A-I-G-I-E, and Lynda, L-Y-N-D-A,
7 Padrta, P-A-D-R-T-A.

8 Any update, Mr. Harkins, on any of those?

9 MR. HARKINS: Yes, Your Honor, Numbers 2 and 3, the
10 Agustin and Smith cases, have both received PFS and so those
11 can be removed.

12 JUDGE KUGLER: Plaintiffs want to be heard on any of
13 these?

14 All right. They will be listed again at the next
15 meeting.

16 I think that resolves all of the listings we wanted
17 to do. I understand that Judge Vanaskie has talked to you
18 about these other expert reports.

19 I just want to add something on the Brautbar,
20 B-R-A-U-T-B-A-R, expert, Nachman Brautbar, M.D., who
21 apparently diagnoses ALS. I'm not sure how that got into our
22 case from the MDL panel, because those referrals are from
23 personal injury action alleging the development of cancer.
24 This is not -- apparently not a cancer case.

25 Technically, we should probably send that back to the

1 panel, but I sense that nobody wants to do that at the moment,
2 since the discovery is just going to be the same anyway for
3 them. But that's just my observation on that.

4 So okay, anything else we want to talk about today?

5 MR. SLATER: Hi, Judge, it's Adam Slater. I don't
6 think the plaintiffs have any other issues and I'm certainly
7 not going to bring up baseball, not the way things are going
8 up in Yankee land.

9 JUDGE KUGLER: At least they beat the Phillies both
10 games last week. I mean, they must be happy about that.

11 MR. SLATER: I wasn't going to say that.

12 JUDGE KUGLER: Well, you knew you didn't have to,
13 so -- anyway...

14 MS. PRISELAC: Your Honor, this is Jessica Priselac
15 for the defendants, and there's nothing further from us.

16 JUDGE KUGLER: Okay. Well, hopefully, we are
17 continuing to reopen the courthouse. I've done three jury
18 trials so far since June 10th. Our expectation is come Labor
19 Day, we can reopen completely. So that's good news, I think,
20 for when we start seeing some more motions in the fall.

21 Hopefully, we can get into the courtroom to argue
22 those motions, and if testimony is necessary, we can take it
23 in the courtroom.

24 Anyway, enjoy the rest of the summer, and we'll talk
25 to you next month, if not sooner, everybody.

1 Thank you very much.

2 RESPONSE: Thank you, Your Honor.

3 (10:51 a.m.)

4 - - - - -

5

6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8

9 /S/ Karen Friedlander, CRR, RMR
10 Court Reporter/Transcriber

11 July 28, 2021
12 Date

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/	4	ADAM ^[1] - 1:13 add ^[2] - 11:23, 30:19 addition ^[1] - 15:21 additional ^[6] - 8:24, 9:10, 9:19, 9:22, 23:15, 26:4 address ^[7] - 8:19, 11:3, 11:9, 11:16, 12:8, 12:11, 26:13 addressed ^[1] - 22:15 addressing ^[8] - 3:15, 4:12, 7:11, 11:11, 12:4, 12:6, 23:11, 27:18 advance ^[1] - 14:11 advised ^[1] - 22:13 affects ^[1] - 13:1 agenda ^[6] - 3:10, 3:11, 6:11, 7:4, 10:14, 29:20 ago ^[1] - 17:20 agree ^[4] - 4:11, 11:14, 11:22, 13:3 agreed ^[1] - 4:2 agreement ^[1] - 7:19 Agustin ^[2] - 30:2, 30:10 ahead ^[2] - 9:4, 12:20 aided ^[1] - 1:25 ALL ^[1] - 3:1 allegations ^[1] - 5:2 alleging ^[1] - 30:23 allowed ^[2] - 17:3, 25:14 ALS ^[3] - 22:8, 23:1, 30:21 amend ^[1] - 23:7 AmerisourceBergen ^[1] - 2:20 amount ^[2] - 6:1, 23:19 AND ^[1] - 1:5 Angeles ^[1] - 2:12 answer ^[1] - 21:8 anticipate ^[1] - 19:14 anticipated ^[1] - 15:7 anyway ^[2] - 31:2, 31:24 anyway.. ^[1] - 31:13 appeared ^[1] - 15:22 applicable ^[2] - 16:25, 17:15 applies ^[1] - 22:6 apply ^[4] - 15:3, 16:13, 16:19, 22:21 approach ^[2] - 21:2, 24:17 argue ^[1] - 31:21 arguments ^[1] - 22:22 aside ^[2] - 8:3, 18:16	assume ^[2] - 27:4, 27:22 assumption ^[2] - 23:21, 23:24 Atlanta ^[1] - 2:8 attempt ^[1] - 24:12 attorneys ^[1] - 14:23 August ^[3] - 19:19, 28:20, 28:25 authority ^[2] - 5:10, 13:24 avail ^[1] - 20:6 available ^[1] - 17:5 Avenue ^[2] - 1:19, 2:15 avoid ^[1] - 6:23 aware ^[1] - 21:10	4:10, 4:25, 5:1, 5:3, 5:5, 5:16, 5:21, 6:4, 6:5, 6:13, 6:15, 6:17, 6:25, 7:1, 9:24, 10:9, 10:10, 10:12, 22:19, 23:18, 23:20, 23:22, 24:6, 25:15, 25:23, 26:5 briefed ^[3] - 3:25, 4:10, 4:24 briefing ^[7] - 3:11, 4:5, 6:15, 9:10, 24:8, 24:15, 24:20 briefs ^[5] - 4:10, 6:24, 24:10, 24:23, 25:9 bring ^[1] - 31:7 Burlia ^[1] - 29:11 BURLIA ^[1] - 29:11 BY ^[8] - 1:13, 1:16, 1:19, 2:3, 2:6, 2:11, 2:14, 2:18 bye ^[1] - 26:24
/S ^[1] - 32:9	4057 ^[1] - 2:15 45202 ^[1] - 2:19 4th ^[1] - 2:15			
0	5			
07068 ^[1] - 1:14	54 ^[1] - 23:16 55402 ^[1] - 1:20 575 ^[1] - 2:15			
1	6			
10022 ^[1] - 2:16 103 ^[1] - 1:13 10:00 ^[2] - 1:8, 3:1 10:39 ^[1] - 26:25 10:43 ^[1] - 26:25 10:51 ^[1] - 32:3 10th ^[1] - 31:18 13 ^[1] - 29:1 14 ^[1] - 23:20 14th ^[2] - 5:2, 5:3 15 ^[2] - 23:9, 25:18 15-page ^[1] - 23:22 16th ^[2] - 5:4, 5:16 17th ^[1] - 2:4 18 ^[3] - 23:9, 23:18, 24:24 1835 ^[1] - 1:16 19103 ^[2] - 1:17, 2:4 1:19-md-02875-RBK-KW ^[1] - 1:5	6 ^[2] - 29:19, 29:21 6(b)(1)(B ^[1] - 5:9 600 ^[1] - 2:18			
	7			
	756-0160 ^[1] - 1:24			
	8			
	800 ^[1] - 1:19 856 ^[1] - 1:24			
	9			
	90067-2904 ^[1] - 2:12			
2	A			
2 ^[1] - 30:9 20 ^[8] - 7:8, 7:18, 8:3, 9:6, 9:7, 9:9, 9:23, 10:13 2021 ^[3] - 1:7, 3:1, 32:11 2029 ^[1] - 2:12 2150 ^[1] - 1:20 24 ^[1] - 28:7 2500 ^[1] - 2:7 26 ^[7] - 7:9, 7:16, 7:24, 8:4, 9:6, 9:7, 17:10 27 ^[2] - 1:10, 13:21 28 ^[3] - 1:7, 3:1, 32:11 2800 ^[1] - 2:19 2900 ^[1] - 1:16 2nd ^[1] - 19:19	A-B-D-U-L-L-A-H-I ^[1] - 29:11 A-G-U-S-T-I-N ^[1] - 30:2 a.m ^[4] - 1:8, 26:25, 32:3 A.M ^[1] - 3:2 Abdullahi ^[1] - 29:11 ability ^[2] - 6:1, 13:24 above-entitled ^[1] - 32:7 Abraham ^[1] - 30:2 absolutely ^[1] - 13:4 accept ^[4] - 6:13, 6:14, 6:17, 6:25 acceptable ^[2] - 20:25, 21:1 accepted ^[1] - 3:14 according ^[1] - 27:13 acknowledge ^[2] - 4:1, 6:3 Actavis ^[2] - 2:9 ACTION ^[1] - 1:4 action ^[3] - 7:20, 10:24, 30:23 Adam ^[5] - 3:17, 12:10, 12:23, 16:21, 31:5			C-L-A-S-K-E-Y ^[1] - 29:12 CA ^[1] - 2:12 camera ^[5] - 7:19, 8:3, 8:5, 8:25, 9:15 cancer ^[6] - 12:17, 22:2, 22:3, 22:15, 30:23, 30:24 cancers ^[1] - 14:13 candidly ^[1] - 24:7 cannot ^[1] - 13:3 capital ^[1] - 29:12 CASE ^[1] - 1:6 case ^[17] - 14:22, 15:15, 17:1, 17:17, 21:15, 21:17, 22:6, 22:10, 22:25, 23:4, 24:21, 25:25, 27:24, 28:20, 29:19, 30:22, 30:24 case-specific ^[1] - 15:15 cases ^[13] - 14:25, 15:1, 15:3, 15:16, 16:13, 16:20, 16:25, 19:22, 19:23, 20:15, 21:10, 28:21, 30:10 Cassandra ^[1] - 28:16 categories ^[1] - 23:10 category ^[2] - 23:9, 23:15 causation ^[18] - 12:16, 13:5, 13:13, 13:15, 14:1, 14:5, 16:23, 18:25, 19:22, 19:25,
3				
3 ^[1] - 30:9 30 ^[1] - 2:4 30(b)(6 ^[1] - 10:23 300 ^[1] - 2:12 30305 ^[1] - 2:8 31 ^[1] - 5:17 3333 ^[1] - 2:7				

<p>20:12, 20:22, 21:6, 21:15, 22:5, 22:15, 22:25, 23:3 caused [1] - 22:8 caution [1] - 6:18 centralized [3] - 14:20, 15:8, 25:24 centralizing [1] - 14:21 Century [1] - 2:12 certain [1] - 16:13 certainly [2] - 18:6, 31:6 certify [1] - 32:6 challenged [2] - 9:6, 9:14 challenges [1] - 9:8 Chambers [1] - 29:5 chance [1] - 28:7 change [3] - 13:23, 25:23, 28:13 changes [2] - 28:17, 28:18 cincinnati [1] - 2:19 Circuit [1] - 25:21 circumstances [2] - 6:23, 20:20 Civil [1] - 5:9 CIVIL [1] - 1:4 claim [1] - 7:5 clarify [2] - 7:9, 9:6 class [1] - 24:21 clear [4] - 3:25, 5:1, 9:12, 16:1 client [1] - 17:8 clients [3] - 17:8, 18:9, 20:22 clue [1] - 12:18 Co [1] - 2:13 Cohen [2] - 27:13, 27:16 colleague [3] - 4:18, 25:21, 26:1 Colon [1] - 22:6 coming [2] - 24:9, 24:25 Commencing [1] - 1:8 comment [1] - 16:22 comments [1] - 15:6 committee [8] - 13:2, 15:8, 15:24, 18:14, 18:17, 19:13, 19:15, 19:21 committee's [1] - 16:7 common [1] - 14:21 communicated [1] - 28:12 Complaint [1] - 23:7 completely [1] - 31:19 computer [1] - 1:25</p>	<p>computer-aided [1] - 1:25 concerned [1] - 19:2 confer [6] - 6:18, 7:23, 15:9, 16:1, 18:18, 24:9 conference [2] - 11:9, 28:20 CONFERENCE [1] - 1:6 conferred [1] - 15:20 confidentiality [1] - 3:12 confirmed [1] - 4:3 connection [2] - 6:11, 8:24 consent [5] - 5:4, 5:13, 5:24, 6:22, 24:4 consented [1] - 24:5 consequence [1] - 4:3 conservative [2] - 24:16, 25:1 consider [1] - 7:1 consistent [1] - 18:2 contact [2] - 11:23, 28:9 CONTINUED [1] - 2:1 continuing [2] - 11:15, 31:17 controversial [1] - 24:8 coordinated [2] - 15:7, 19:14 coordination [1] - 15:23 correct [11] - 7:24, 10:25, 11:6, 20:2, 23:10, 23:17, 27:14, 27:16, 27:19, 27:23, 32:6 counsel [12] - 6:12, 6:18, 6:22, 8:24, 9:22, 15:24, 16:22, 17:4, 17:16, 21:4, 28:3, 28:6 count [2] - 7:16, 7:24 counts [1] - 7:7 couple [3] - 8:6, 18:25, 27:11 course [1] - 7:20 court [2] - 3:8, 27:4 COURT [1] - 1:2 Court [3] - 1:23, 8:9, 32:9 Court's [4] - 5:10, 14:2, 16:14, 23:25 courthouse [1] - 31:17 courtroom [2] - 31:21,</p>	<p>31:23 cover [3] - 19:22, 19:23 covers [1] - 21:21 Craigie [1] - 30:6 CRAIGIE [1] - 30:6 CRR [1] - 32:9 CVS [1] - 2:13 cycle [1] - 11:9</p> <p style="text-align: center;">D</p> <p>Daniel [1] - 30:6 DANIEL [1] - 2:18 Danny [1] - 22:6 Date [1] - 32:11 Daubert [1] - 19:5 David [1] - 11:5 DAVID [1] - 1:16 days [4] - 4:1, 5:20, 6:14, 8:6 deadline [9] - 5:18, 13:5, 13:10, 18:4, 20:8, 20:11, 20:19, 24:25, 25:3 deadlines [5] - 6:20, 12:21, 19:8, 19:16, 20:11 deal [7] - 12:16, 15:10, 21:14, 21:16, 22:14, 22:24, 25:2 dealing [5] - 14:16, 15:15, 18:11, 23:7, 24:22 deals [2] - 11:25, 23:6 Debra [1] - 29:14 decide [1] - 5:9 decided [1] - 4:11 decision [1] - 7:1 declined [1] - 18:19 deep [1] - 13:14 Defendant [4] - 2:5, 2:13, 2:16, 2:20 defendant [2] - 23:9, 23:15 Defendants [1] - 2:8 defendants [20] - 4:15, 7:19, 11:12, 11:14, 11:20, 11:22, 12:4, 12:7, 23:10, 23:11, 23:13, 23:16, 25:9, 25:14, 26:17, 26:18, 28:15, 28:19, 29:19, 31:15 defendants' [2] - 10:23, 23:6 Defense [1] - 2:5 defense [12] - 4:2, 4:16, 7:8, 13:5, 13:7, 13:11, 13:19, 16:24,</p>	<p>18:3, 19:7, 20:25, 27:19 defer [2] - 23:3, 25:19 deferring [1] - 26:2 delay [2] - 5:8, 16:11 depose [1] - 18:21 deposed [2] - 13:6, 13:8 deposition [2] - 10:23, 13:12 depositions [1] - 16:10 designated [2] - 21:3, 21:5 designations [1] - 3:12 determine [1] - 5:7 development [1] - 30:23 diagnoses [1] - 30:21 dialing [1] - 26:22 different [4] - 7:6, 7:7, 18:4, 22:23 difficult [1] - 20:16 disclose [3] - 17:12, 20:9, 20:12 disclosed [5] - 17:13, 18:8, 18:9, 20:13, 22:4 disclosure [5] - 17:10, 17:16, 20:3, 20:14 discovery [5] - 14:21, 15:17, 17:2, 22:14, 31:2 discrepancy [1] - 8:3 discrete [1] - 4:17 discuss [1] - 27:12 discussed [1] - 16:6 discussions [1] - 18:1 dismiss [1] - 28:13 dismissed [4] - 27:14, 27:15, 27:24, 28:25 dispute [1] - 7:21 disputed [1] - 7:18 disputes [1] - 11:10 DISTRICT [3] - 1:2, 1:2, 1:10 diverted [1] - 16:19 docket [1] - 5:10 document [1] - 9:25 documents [20] - 7:4, 7:5, 7:7, 7:8, 7:9, 7:10, 7:15, 7:17, 7:18, 8:2, 8:4, 8:9, 9:11, 9:15, 9:20, 9:24, 10:11, 10:13, 10:16 Doe [1] - 15:1 done [2] - 14:4, 31:17 double [1] - 23:20</p>	<p>double-spaced [1] - 23:20 down [3] - 3:4, 25:13 dozen [3] - 14:25, 16:20, 20:15 Drugs [1] - 7:13 DUANE [1] - 2:2 due [2] - 5:2, 19:17 uplicative [1] - 15:22</p> <p style="text-align: center;">E</p> <p>easier [2] - 22:24 East [1] - 2:12 effect [1] - 5:17 efficient [1] - 16:17 Eisenhower [1] - 1:13 either [1] - 19:4 email [4] - 8:11, 8:13, 8:19, 17:20 Emily [1] - 29:5 end [1] - 24:24 enjoy [1] - 31:24 enlargement [1] - 26:10 ensure [1] - 7:23 entire [1] - 14:19 entitled [2] - 10:10, 32:7 envisioned [1] - 16:6 ESQUIRE [10] - 1:13, 1:16, 1:19, 2:3, 2:3, 2:6, 2:7, 2:11, 2:11, 2:14 established [1] - 6:20 Estate [1] - 29:12 estimates [2] - 7:6, 7:7 evaluate [1] - 24:12 evening [1] - 24:4 event [2] - 7:18, 10:8 excoriated [1] - 25:20 excusable [1] - 5:11 excuse [1] - 5:8 executive [7] - 15:8, 15:24, 18:14, 18:17, 19:13, 19:15, 19:21 executives [1] - 16:7 expect [3] - 10:16, 18:14, 26:12 expectation [1] - 31:18 expected [1] - 13:19 expert [23] - 12:1, 12:2, 12:15, 13:16, 14:23, 15:15, 15:19, 16:7, 17:13, 18:21, 19:8, 19:10, 19:17, 19:20, 19:23, 20:10, 20:12, 21:5, 21:16,</p>
--	---	---	---	--

21:24, 22:6, 30:18, 30:20 experts [27] - 13:6, 13:7, 13:13, 14:5, 14:9, 14:11, 14:12, 15:12, 15:19, 16:9, 16:19, 17:2, 17:5, 17:9, 17:12, 17:13, 18:8, 18:12, 18:15, 18:25, 20:6, 20:9, 20:21, 21:5, 21:12, 21:14, 22:2 explaining [1] - 9:16 explicit [1] - 8:7 express [1] - 14:20 extend [1] - 23:8 extending [1] - 13:10 extension [10] - 4:2, 5:14, 5:15, 12:21, 13:4, 14:8, 15:14, 16:15, 18:19, 25:22 extensive [2] - 24:8, 24:16 extent [1] - 19:12 extra [1] - 23:19 extraneous [1] - 16:12 extreme [1] - 25:24	9:1, 12:14, 12:24, 29:23 five [4] - 16:9, 16:10, 16:11, 18:12 Floor [1] - 2:15 font [1] - 23:20 FOR [1] - 1:2 foregoing [1] - 32:6 form [1] - 8:13 formalize [1] - 26:7 former [1] - 25:21 forward [1] - 21:17 FREEMAN [1] - 1:12 Friday [1] - 11:8 Friedlander [3] - 1:23, 3:8, 32:9 friedlanderreporter@gmail.com [1] - 1:23 friend [1] - 3:13 full [1] - 6:25	21:19 H H-U-P-P [1] - 29:9 hand [1] - 12:24 handle [1] - 4:16 handled [1] - 19:1 handling [2] - 4:18, 16:18 hands [1] - 13:23 hang [1] - 26:19 happy [2] - 9:14, 31:10 HARKINS [6] - 2:7, 27:17, 27:23, 28:18, 29:18, 30:9 Harkins [4] - 27:18, 27:21, 28:8, 30:8 Health [1] - 2:13 hear [4] - 12:13, 17:18, 17:24, 18:24 heard [4] - 20:17, 27:22, 29:16, 30:12 Hector [1] - 29:10 Helen [1] - 29:6 Hello [1] - 12:10 help [1] - 15:14 Henton [1] - 28:16 HENTON [1] - 28:16 Hetero [8] - 2:16, 7:4, 7:8, 7:11, 7:13, 9:7, 9:15 hi [1] - 31:5 Hi [1] - 27:8 highlights [1] - 24:6 HILL [1] - 2:14 HONIK [1] - 1:15 Honor [58] - 3:17, 4:3, 4:14, 6:3, 6:9, 7:12, 7:16, 8:6, 8:7, 8:8, 8:12, 8:16, 8:20, 9:3, 9:5, 9:9, 9:11, 10:4, 10:8, 10:18, 10:20, 11:1, 11:5, 11:7, 11:9, 11:13, 11:16, 11:21, 12:10, 12:23, 14:18, 16:21, 17:11, 17:19, 19:18, 20:11, 21:1, 21:18, 21:21, 23:12, 23:21, 25:6, 25:19, 26:8, 26:16, 26:17, 26:18, 27:3, 27:17, 27:23, 28:2, 28:18, 28:19, 29:18, 30:9, 31:14, 32:2 Honor's [2] - 5:22, 6:2 HONORABLE [2] - 1:9, 1:10 hope [1] - 27:2	hopefully [2] - 31:16, 31:21 hoping [1] - 17:24 hours [1] - 28:7 hunting [1] - 10:1 Hupp [1] - 29:9 Hurst [1] - 29:14 HURST [1] - 29:14 I idea [2] - 17:7 identification [2] - 14:10, 14:13 identified [1] - 9:9 identify [1] - 8:1 identifying [1] - 16:8 imagining [1] - 19:9 impasse [1] - 7:21 impurity [1] - 22:7 IN [1] - 1:4 in-camera [4] - 7:19, 8:3, 8:5, 8:25 inability [1] - 6:19 Inc [2] - 2:9, 2:9 inclination [1] - 18:22 indelible [1] - 26:9 individual [1] - 14:22 Industries [1] - 2:8 information [1] - 18:3 informed [1] - 11:7 inherent [1] - 5:10 injury [2] - 22:3, 30:23 ink [1] - 25:17 insensitive [1] - 24:15 inspection [1] - 7:20 instance [1] - 26:3 instructions [1] - 8:8 intact [2] - 20:24, 21:13 intend [1] - 17:12 intended [1] - 15:18 intent [1] - 15:4 intention [1] - 14:22 interpret [1] - 17:14 involved [1] - 24:20 involving [1] - 28:20 IRBESARTAN [1] - 1:5 isolation [1] - 16:3 issue [26] - 3:15, 3:24, 4:7, 4:10, 4:18, 4:24, 6:6, 6:7, 6:12, 6:15, 7:1, 7:3, 7:8, 7:17, 12:4, 12:9, 14:17, 15:21, 18:16, 21:22, 22:4, 22:18, 23:5, 23:11, 25:18 issues [5] - 4:17, 11:15, 13:8, 24:20,	31:6 item [3] - 3:11, 10:22, 11:25 items [1] - 12:1 itself [1] - 23:24 J Jeff [1] - 11:21 JEFFREY [1] - 2:18 JERSEY [1] - 1:2 Jersey [1] - 1:14 Jessica [2] - 4:15, 31:14 JESSICA [1] - 2:3 Jimmy [1] - 30:5 John [1] - 15:1 JOHN [1] - 1:16 JOHNSTON [3] - 2:11, 11:13, 11:19 Johnston [1] - 11:13 joining [1] - 27:2 Joint [1] - 2:5 judge [1] - 26:3 Judge [10] - 3:6, 12:5, 15:5, 16:5, 26:14, 26:20, 27:1, 27:6, 30:17, 31:5 JUDGE [12] - 1:10, 27:1, 27:4, 27:10, 27:25, 28:11, 28:22, 29:21, 30:12, 31:9, 31:12, 31:16 judgment [1] - 19:5 July [6] - 1:7, 5:2, 5:3, 5:4, 5:16, 32:11 JULY [1] - 3:1 June [1] - 31:18 jury [1] - 31:17 K Karen [8] - 1:23, 3:5, 3:7, 3:8, 27:5, 27:6, 27:8, 32:9 KATZ [1] - 1:12 keep [3] - 20:23, 21:13, 21:17 keeps [1] - 17:4 Kelly [1] - 4:18 KELLY [1] - 2:3 kerfuffle [3] - 3:13, 3:21, 23:5 kerfuffles [1] - 6:23 knowledge [1] - 21:7 Kristen [1] - 23:13 KRISTEN [1] - 2:11 KUGLER [12] - 1:10, 27:1, 27:4, 27:10, 27:25, 28:11, 28:22,
--	--	---	--	---

29:21, 30:12, 31:9, 31:12, 31:16 Kugler [4] - 16:5, 26:14, 26:20, 27:1 Kugler's [1] - 15:5 Kumar [6] - 15:25, 16:15, 17:17, 20:13, 22:1, 22:13	limits [2] - 23:6, 25:22 line [4] - 3:5, 8:1, 17:21, 17:22 lingering [1] - 11:10 list [3] - 28:5, 28:24, 29:19 listed [2] - 10:14, 30:14 listen [1] - 22:22 listing [3] - 29:2, 29:17, 29:24 listings [1] - 30:16 LITIGATION [1] - 1:5 litigation [3] - 14:1, 14:19, 17:13 LLC [2] - 1:12, 2:9 Lloyd [1] - 29:7 LLP [5] - 2:2, 2:6, 2:10, 2:14, 2:17 local [1] - 25:15 LOCKARD [10] - 12:5, 14:18, 17:10, 18:7, 20:2, 20:8, 21:1, 21:21, 21:24, 26:17 Lockard [4] - 12:6, 14:16, 20:25, 21:20 LOCKHARD [1] - 2:6 log [4] - 8:2, 8:23, 9:13, 10:1 look [1] - 8:23 looking [2] - 9:18, 23:15 Los [1] - 2:12 LOSARTAN [1] - 1:4 Lou [1] - 22:8 Louissant [1] - 29:25 Ltd [1] - 2:8 Lucinda [3] - 29:8, 29:19, 29:21 Lynda [1] - 30:6 LYNDA [1] - 30:6	Master [1] - 5:17 matter [15] - 5:8, 6:20, 7:1, 7:2, 9:21, 12:21, 12:22, 19:1, 20:5, 20:18, 23:2, 27:13, 27:20, 28:1, 32:7 matters [3] - 19:4, 27:11, 28:17 maximum [1] - 23:18 MAZIE [1] - 1:12 MC [1] - 29:12 McClaskey [1] - 29:12 MDL [6] - 14:20, 14:23, 14:25, 22:10, 22:11, 30:22 mean [5] - 12:14, 20:10, 20:11, 27:14, 31:10 meaning [1] - 20:10 mechanical [1] - 1:25 medication [1] - 22:7 meet [5] - 6:19, 15:9, 16:1, 18:18, 24:8 meeting [2] - 28:24, 30:15 members [1] - 4:16 memory [1] - 26:1 merits [2] - 5:21, 13:14 met [1] - 15:20 might [1] - 24:12 mine [3] - 3:13, 25:21, 26:1 Minneapolis [1] - 1:20 Minnesota [1] - 1:20 mispronounce [1] - 12:2 moment [1] - 31:1 moments [1] - 17:20 Monday [4] - 19:18, 19:19, 21:15, 24:3 month [1] - 31:25 morning [15] - 3:17, 4:14, 4:21, 4:23, 7:12, 7:14, 9:3, 9:5, 11:5, 11:21, 12:5, 23:12, 27:1, 27:3, 27:17 MORRIS [1] - 2:2 most [3] - 16:17, 21:9, 24:10 motion [4] - 19:4, 23:7, 27:15, 28:13 motions [4] - 19:5, 31:20, 31:22 move [1] - 7:3 moved [1] - 5:19 moving [3] - 17:1, 19:4, 21:17 MR [42] - 3:17, 3:21,	3:23, 6:9, 7:12, 7:16, 8:6, 8:12, 8:16, 8:20, 9:3, 9:4, 9:5, 9:23, 10:4, 10:8, 10:18, 10:20, 11:1, 11:5, 11:21, 12:10, 12:23, 13:1, 14:12, 14:15, 16:21, 17:19, 18:1, 19:18, 20:3, 21:7, 21:18, 22:19, 26:15, 27:17, 27:23, 28:18, 29:18, 30:9, 31:5, 31:11 MS [24] - 4:14, 4:21, 4:23, 11:13, 11:19, 12:5, 14:18, 17:10, 18:7, 20:2, 20:8, 21:1, 21:21, 21:24, 23:12, 23:17, 24:3, 24:19, 25:6, 25:12, 26:8, 26:17, 28:2, 31:14 must [2] - 20:10, 31:10	notices [1] - 10:23 notify [1] - 11:16 number [10] - 7:7, 7:24, 8:1, 15:1, 24:14, 24:19, 24:20, 24:21, 26:20, 26:21 Number [2] - 29:19, 29:21 NUMBER [1] - 1:4 numbers [1] - 15:19 Numbers [1] - 30:9 NY [1] - 2:16
L				O
L-A-U-G-H-L-I-N [1] - 29:8 L-O-U-I-S-S-A-N-T [1] - 30:1 Labor [1] - 31:18 Labs [2] - 2:16, 7:13 land [1] - 31:8 larger [1] - 24:14 Lasalle [1] - 1:19 last [2] - 16:22, 31:10 late [8] - 3:13, 4:1, 4:25, 5:13, 6:6, 6:14, 6:17, 6:22 late-filed [1] - 6:17 Laughlin [3] - 29:8, 29:19, 29:21 Laughter [2] - 3:22, 25:10 Laura [1] - 29:4 LAW [1] - 1:18 law [10] - 12:3, 12:15, 13:16, 13:25, 14:4, 16:23, 19:10, 19:24, 20:17, 20:23 laws [1] - 24:22 leadership [3] - 13:3, 13:20, 15:25 least [2] - 13:12, 31:9 leave [1] - 23:7 LEE [1] - 2:11 Lee [1] - 8:19 left [1] - 26:9 length [1] - 23:22 less [3] - 14:25, 16:20, 20:15 letter [11] - 4:6, 4:9, 4:17, 6:11, 10:14, 10:15, 13:18, 20:3, 24:6, 24:10, 27:13 letters [4] - 3:10, 3:25, 7:4, 28:25 Lexington [1] - 2:15 LIABILITY [1] - 1:5 liberal [1] - 26:10 likely [2] - 7:20, 14:11 limit [2] - 23:8, 23:22 limited [7] - 4:7, 6:5, 6:16, 9:23, 15:3, 17:8, 20:14				O-R-R [1] - 29:6 object [1] - 4:8 observation [1] - 31:3 obtained [1] - 19:10 obviously [6] - 12:17, 13:1, 19:2, 21:10, 22:3, 28:13 OF [1] - 1:2 off-cycle [1] - 11:9 Official [1] - 1:23 OH [1] - 2:19 once [1] - 25:20 one [14] - 8:7, 8:22, 12:1, 12:15, 13:3, 18:19, 19:9, 20:12, 21:3, 22:24, 23:1, 25:12, 28:9, 29:18 open [1] - 16:17 operating [1] - 23:23 opinions [3] - 13:7, 22:2, 22:7 opportunity [1] - 6:25 oppose [1] - 13:4 opposed [1] - 14:8 opposing [1] - 6:22 opposition [2] - 5:15, 24:5 order [13] - 5:1, 5:17, 5:22, 6:2, 7:20, 13:16, 14:2, 15:5, 18:4, 21:13, 23:25, 26:7, 27:15 orders [3] - 27:12, 28:15, 28:19 originally [1] - 9:6 Orr [1] - 29:6 outside [1] - 14:23 own [2] - 14:5, 19:10
	M		N	
M.D [1] - 30:20 main [1] - 18:12 manage [1] - 5:10 MANAGEMENT [1] - 1:6 management [1] - 28:20 manufacturer [2] - 15:1, 15:2 Marcia [1] - 29:13 mark [1] - 26:9 Market [1] - 1:16 Marlene [2] - 25:6, 28:2 MARLENE [1] - 1:19 MASTER [1] - 1:9		Nachman [1] - 30:20 NAKUL [1] - 2:14 Nakul [1] - 7:12 name [4] - 12:3, 14:25, 15:2, 21:12 names [1] - 14:12 NE [1] - 2:7 necessary [2] - 9:17, 31:22 need [10] - 6:15, 9:21, 10:24, 11:24, 13:7, 13:15, 16:3, 19:5, 24:12, 25:1 needed [1] - 12:12 needs [1] - 16:13 neglect [1] - 5:11 never [2] - 14:22, 15:18 new [1] - 26:20 NEW [1] - 1:2 New [2] - 1:14, 2:16 news [1] - 31:19 next [12] - 7:3, 10:15, 10:22, 11:25, 23:5, 25:3, 28:24, 29:2, 29:17, 29:20, 30:14, 31:25 nobody [1] - 31:1 note [1] - 28:4 nothing [6] - 11:6, 13:18, 14:3, 26:17, 26:18, 31:15 notice [1] - 7:17		P
				P-A-D-R-T-A [1] - 30:7 P-I-N-A [1] - 29:4 Padrta [1] - 30:7 Page [1] - 1:10

<p>page [3] - 23:6, 23:8, 25:22</p> <p>pages [13] - 23:9, 23:15, 23:16, 23:18, 23:19, 24:7, 24:24, 25:8, 25:14, 25:18, 26:4, 26:10</p> <p>Pamela [3] - 27:21, 28:1, 28:4</p> <p>panel [2] - 30:22, 31:1</p> <p>Parafinczuk [19] - 12:3, 12:11, 12:19, 14:24, 15:16, 15:23, 17:14, 17:15, 17:18, 17:25, 18:7, 18:12, 18:16, 18:18, 19:24, 20:13, 20:17, 20:23, 22:2</p> <p>PAREKH [6] - 9:3, 9:5, 9:23, 10:4, 10:18, 10:20</p> <p>Parekh [3] - 10:4, 10:6, 10:13</p> <p>Park [1] - 2:12</p> <p>Parkway [1] - 1:13</p> <p>part [2] - 10:24, 16:4</p> <p>PARTIES [1] - 3:1</p> <p>parties [11] - 4:15, 4:19, 4:23, 5:5, 5:7, 5:13, 5:18, 6:4, 11:7, 17:11, 24:20</p> <p>parties' [2] - 5:19, 5:20</p> <p>passed [1] - 20:9</p> <p>Pause [1] - 26:25</p> <p>PC [1] - 1:15</p> <p>pdf [1] - 8:13</p> <p>PEC [2] - 14:23, 15:19</p> <p>peeling [1] - 16:12</p> <p>peg [1] - 7:8</p> <p>Pennsylvania [2] - 1:17, 2:4</p> <p>people [2] - 21:11, 29:24</p> <p>per [5] - 23:9, 23:15, 23:18, 23:20, 26:4</p> <p>permit [1] - 6:4</p> <p>personal [1] - 30:23</p> <p>perspective [2] - 13:24, 14:3</p> <p>pertaining [1] - 19:25</p> <p>PFS [1] - 30:10</p> <p>Pharma [1] - 2:9</p> <p>Pharmaceutical [1] - 2:8</p> <p>Pharmaceuticals [1] - 2:9</p> <p>pharmacy [1] - 11:14</p> <p>phase [7] - 15:16, 16:4, 16:5, 16:16,</p>	<p>21:15, 22:25, 23:4</p> <p>Philadelphia [2] - 1:17, 2:4</p> <p>Phillies [1] - 31:9</p> <p>phone [1] - 26:14</p> <p>Piedmont [1] - 2:7</p> <p>Pina [1] - 29:4</p> <p>Plaintiff [3] - 1:14, 1:17, 1:21</p> <p>plaintiff [4] - 14:22, 20:5, 23:2, 28:6</p> <p>plaintiffs [3] - 19:10, 25:22, 26:2</p> <p>plaintiffs [36] - 3:16, 3:18, 4:25, 5:3, 5:11, 5:15, 5:18, 6:4, 7:8, 7:17, 7:19, 7:23, 8:1, 10:5, 10:6, 10:9, 11:6, 12:9, 12:14, 17:1, 17:5, 17:6, 20:1, 20:11, 21:4, 22:4, 24:3, 25:5, 25:7, 26:15, 28:1, 28:3, 28:23, 29:16, 30:12, 31:6</p> <p>plaintiffs' [21] - 5:8, 5:13, 5:21, 6:6, 6:12, 9:1, 13:3, 13:12, 13:20, 15:8, 15:23, 15:24, 16:7, 17:12, 17:16, 18:13, 18:17, 19:13, 19:21, 19:23, 21:4</p> <p>playing [2] - 5:22, 5:25</p> <p>PLLC [1] - 1:18</p> <p>point [2] - 4:8, 5:16</p> <p>pointed [1] - 13:18</p> <p>position [4] - 3:24, 13:2, 18:2, 22:9</p> <p>possible [2] - 24:16, 25:2</p> <p>potential [1] - 15:13</p> <p>potentially [1] - 21:11</p> <p>practice [1] - 19:4</p> <p>precisely [1] - 8:8</p> <p>precluded [2] - 13:16, 20:7</p> <p>predicament [1] - 18:13</p> <p>prejudicial [2] - 13:13, 14:9</p> <p>preparation [1] - 14:9</p> <p>prepare [1] - 16:7</p> <p>prepared [1] - 6:24</p> <p>presentation [1] - 9:22</p> <p>presented [1] - 23:1</p> <p>presently [2] - 7:22, 7:24</p>	<p>preserve [2] - 5:20, 5:25</p> <p>pretty [2] - 3:25, 9:11</p> <p>Priselac [2] - 4:15, 31:14</p> <p>PRISELAC [3] - 2:3, 4:14, 31:14</p> <p>privilege [5] - 7:5, 8:2, 8:23, 9:13, 10:1</p> <p>privileged [2] - 7:4, 9:25</p> <p>pro [2] - 25:22, 26:2</p> <p>problem [1] - 8:10</p> <p>Procedure [1] - 5:9</p> <p>procedure [1] - 25:23</p> <p>proceed [4] - 14:4, 15:7, 16:11, 18:2</p> <p>proceeding [1] - 16:2</p> <p>proceedings [1] - 32:7</p> <p>Proceedings [1] - 1:25</p> <p>process [1] - 24:14</p> <p>produced [1] - 1:25</p> <p>production [1] - 14:11</p> <p>PRODUCTS [1] - 1:5</p> <p>promptly [1] - 7:2</p> <p>proposal [1] - 18:19</p> <p>proposals [1] - 15:10</p> <p>propose [1] - 15:12</p> <p>proposed [1] - 26:7</p> <p>provide [1] - 10:9</p> <p>provided [4] - 5:21, 6:1, 8:4, 16:9</p> <p>PSC [1] - 28:5</p> <p>pulled [1] - 15:19</p> <p>purpose [1] - 14:20</p> <p>push [3] - 13:10, 13:11, 18:15</p> <p>put [2] - 16:16, 22:14</p> <p>putting [1] - 15:14</p>	<p>reality [1] - 20:5</p> <p>really [12] - 4:8, 13:15, 13:23, 16:13, 16:14, 18:6, 18:16, 18:20, 20:17, 22:10, 22:12, 24:11</p> <p>reason [2] - 14:5, 18:3</p> <p>reasonable [1] - 24:22</p> <p>receive [1] - 9:20</p> <p>received [2] - 3:10, 30:10</p> <p>receiving [1] - 10:16</p> <p>recently [1] - 14:8</p> <p>record [1] - 32:7</p> <p>recorded [1] - 1:25</p> <p>reexamine [1] - 28:14</p> <p>referrals [1] - 30:22</p> <p>regard [1] - 13:8</p> <p>regarding [4] - 5:1, 15:6, 22:2, 23:25</p> <p>rejoining [1] - 26:22</p> <p>relate [1] - 12:18</p> <p>related [1] - 22:7</p> <p>remaining [1] - 23:22</p> <p>remove [1] - 29:20</p> <p>removed [3] - 21:25, 29:22, 30:11</p> <p>reopen [2] - 31:17, 31:19</p> <p>replies [1] - 24:1</p> <p>reply [9] - 4:6, 4:7, 6:4, 6:15, 23:6, 23:22, 25:15, 25:16, 26:4</p> <p>report [4] - 12:2, 14:11, 16:8, 16:16</p> <p>Reporter [1] - 1:23</p> <p>REPORTER [3] - 3:6, 27:6, 27:9</p> <p>reporter [2] - 3:8, 27:4</p> <p>Reporter/Transcriber [1] - 32:9</p> <p>reports [25] - 12:1, 12:15, 12:17, 12:18, 12:19, 13:5, 13:11, 13:16, 13:17, 13:20, 13:21, 14:1, 14:24, 15:3, 16:1, 16:12, 16:23, 19:8, 19:17, 19:21, 19:24, 21:9, 21:16, 30:18</p> <p>represent [2] - 20:1, 24:11</p> <p>representatives [1] - 24:21</p> <p>represented [2] - 19:25, 20:22</p> <p>request [20] - 4:6, 4:7, 5:19, 5:23, 6:5, 6:13,</p>	<p>6:21, 11:8, 23:8, 24:5, 24:6, 24:7, 24:23, 25:22, 25:25, 26:2, 26:6, 26:10, 27:24, 28:19</p> <p>requested [3] - 5:14, 5:15, 13:11</p> <p>requesting [1] - 8:2</p> <p>requests [1] - 25:24</p> <p>require [3] - 9:19, 21:15, 24:8</p> <p>required [1] - 17:11</p> <p>requirement [1] - 17:11</p> <p>requires [2] - 5:11, 9:11</p> <p>requiring [1] - 19:7</p> <p>resolve [2] - 7:21, 20:16</p> <p>resolved [5] - 12:21, 12:22, 19:6, 27:14, 29:20</p> <p>resolves [1] - 30:16</p> <p>resources [1] - 16:19</p> <p>respect [1] - 27:19</p> <p>respectfully [2] - 4:24, 6:5</p> <p>respond [8] - 5:18, 5:21, 6:1, 6:25, 12:24, 19:7, 22:17, 25:5</p> <p>responding [1] - 25:5</p> <p>RESPONSE [2] - 27:3, 32:2</p> <p>response [3] - 5:19, 21:15, 28:12</p> <p>responsive [1] - 19:17</p> <p>rest [1] - 31:24</p> <p>restore [1] - 5:22</p> <p>resulted [1] - 25:23</p> <p>retail [1] - 10:22</p> <p>returnable [1] - 28:20</p> <p>review [5] - 8:3, 8:5, 8:25, 9:7, 9:21</p> <p>Richer [1] - 23:13</p> <p>RICHER [5] - 2:11, 23:12, 23:17, 24:3, 24:19</p> <p>Ridley [1] - 29:13</p> <p>Righteous [1] - 28:17</p> <p>ripe [2] - 7:1, 9:21</p> <p>risk [1] - 26:3</p> <p>Rivera [1] - 29:10</p> <p>RMR [1] - 32:9</p> <p>Road [1] - 2:7</p> <p>Robert [1] - 30:3</p> <p>ROBERT [1] - 1:10</p> <p>Roseland [1] - 1:14</p> <p>rounder [1] - 24:14</p> <p>Rule [2] - 5:9, 17:10</p>
Q				
<p>quickly [2] - 8:4, 9:6</p> <p>quoted [1] - 15:5</p>				
R				
<p>R-I-D-L-E-Y [1] - 29:13</p> <p>raised [2] - 15:21, 24:20</p> <p>random [1] - 10:2</p> <p>rather [1] - 25:2</p> <p>rationale [1] - 9:16</p> <p>RE [1] - 1:4</p> <p>reach [1] - 24:3</p> <p>reached [1] - 28:6</p> <p>read [1] - 15:25</p> <p>ready [2] - 13:6, 16:10</p> <p>realist [1] - 22:20</p>				

<p><i>rules</i> ^[1] - 25:15 <i>ruling</i> ^[3] - 22:20, 22:21, 25:19 <i>Russell</i> ^[1] - 29:3</p>	<p><i>similarly</i> ^[1] - 10:9 <i>simply</i> ^[3] - 5:20, 5:24, 5:25 <i>six</i> ^[2] - 5:20, 9:8 <i>size</i> ^[1] - 23:20 <i>SLATER</i> ^[24] - 1:12, 1:13, 3:17, 3:21, 3:23, 6:9, 9:4, 11:1, 12:10, 12:23, 13:1, 14:12, 14:15, 16:21, 17:19, 18:1, 19:18, 20:3, 21:7, 21:18, 22:19, 26:15, 31:5, 31:11 <i>Slater</i> ^[15] - 3:17, 3:20, 6:8, 10:25, 11:6, 12:10, 12:23, 16:8, 16:21, 17:25, 18:24, 21:6, 22:18, 25:4, 31:5 <i>slowed</i> ^[2] - 3:3, 3:4 <i>Smiley</i> ^[1] - 30:4 <i>Smith</i> ^[2] - 30:3, 30:10 <i>solely</i> ^[1] - 6:5 <i>solution</i> ^[1] - 18:20 <i>somewhere</i> ^[1] - 14:24 <i>sooner</i> ^[1] - 31:25 <i>sorry</i> ^[4] - 10:4, 11:18, 17:25, 25:11 <i>sort</i> ^[2] - 16:2, 18:19 <i>spaced</i> ^[1] - 23:20 <i>sparingly</i> ^[1] - 14:7 <i>SPECIAL</i> ^[1] - 1:9 <i>Special</i> ^[1] - 5:17 <i>specific</i> ^[8] - 15:15, 15:17, 20:22, 21:14, 22:14, 22:25, 23:3 <i>specifically</i> ^[3] - 11:3, 18:8, 20:14 <i>specified</i> ^[1] - 23:25 <i>spend</i> ^[1] - 16:18 <i>spilled</i> ^[1] - 25:17 <i>STANOCH</i> ^[2] - 1:16, 11:5 <i>Stanoch</i> ^[4] - 11:2, 11:5, 11:14, 11:23 <i>start</i> ^[1] - 31:20 <i>started</i> ^[1] - 3:9 <i>state</i> ^[1] - 24:21 <i>statement</i> ^[5] - 9:24, 10:9, 10:10, 10:13, 10:15 <i>STATES</i> ^[2] - 1:2, 1:10 <i>steering</i> ^[1] - 13:2 <i>stenography</i> ^[1] - 1:25 <i>step</i> ^[1] - 14:19 <i>Steve</i> ^[1] - 27:17 <i>STEVEN</i> ^[1] - 2:7</p>	<p><i>Stevens</i> ^[1] - 8:19 <i>Stewart</i> ^[3] - 27:21, 28:1, 28:4 <i>still</i> ^[2] - 5:17, 21:10 <i>Stone</i> ^[2] - 27:13, 27:19 <i>stop</i> ^[3] - 13:25, 14:4, 18:6 <i>stopped</i> ^[1] - 14:6 <i>straighten</i> ^[1] - 7:25 <i>straightforward</i> ^[1] - 18:11 <i>streamlining</i> ^[1] - 14:21 <i>Street</i> ^[3] - 1:16, 2:4, 2:18 <i>stricken</i> ^[1] - 15:13 <i>struggling</i> ^[2] - 19:3 <i>submission</i> ^[2] - 6:10, 6:12 <i>submissions</i> ^[3] - 8:24, 9:9, 15:6 <i>submit</i> ^[6] - 9:14, 9:24, 10:10, 10:12, 10:14, 14:23 <i>submits</i> ^[1] - 9:15 <i>submitted</i> ^[2] - 6:24, 26:7 <i>subset</i> ^[2] - 15:2, 15:3 <i>successful</i> ^[1] - 25:8 <i>succinctly</i> ^[1] - 11:9 <i>sufficient</i> ^[2] - 21:19, 25:18 <i>suggest</i> ^[1] - 8:17 <i>suite</i> ^[1] - 2:19 <i>Suite</i> ^[5] - 1:16, 1:20, 2:7, 2:12, 2:15 <i>summary</i> ^[1] - 19:5 <i>summer</i> ^[1] - 31:24 <i>support</i> ^[1] - 21:5 <i>suppose</i> ^[4] - 16:25, 17:8, 21:11, 24:13 <i>sur</i> ^[3] - 23:6, 24:1, 25:16 <i>sur-replies</i> ^[1] - 24:1 <i>sur-reply</i> ^[2] - 23:6, 25:16 <i>syndrome</i> ^[1] - 22:8</p>	<p><i>THE</i> ^[3] - 1:2, 1:9, 1:10 <i>The Court</i> ^[62] - 3:3, 3:6, 3:7, 3:19, 4:9, 4:12, 4:17, 4:20, 4:22, 5:5, 5:8, 6:7, 6:10, 7:14, 7:25, 8:10, 8:14, 8:17, 8:21, 9:7, 9:17, 10:3, 10:6, 10:12, 10:19, 10:21, 11:11, 11:16, 11:18, 11:20, 11:25, 12:8, 12:13, 12:25, 14:10, 14:14, 14:16, 16:8, 16:9, 17:18, 17:24, 18:22, 19:19, 20:16, 21:3, 21:13, 21:19, 21:23, 22:16, 22:17, 22:23, 23:14, 24:2, 24:18, 25:4, 25:11, 25:20, 26:9, 26:19, 27:6, 27:9, 27:21 <i>theirs</i> ^[1] - 4:11 <i>themselves</i> ^[2] - 10:16, 20:6 <i>theories</i> ^[1] - 21:6 <i>they've</i> ^[1] - 19:25 <i>Third</i> ^[1] - 25:21 <i>third</i> ^[2] - 21:24, 22:6 <i>THOMAS</i> ^[1] - 1:9 <i>Thomas</i> ^[1] - 29:7 <i>thomas.vanaskie@stevenslee.com</i> ^[1] - 8:21 <i>Thorn</i> ^[1] - 30:5 <i>THORNBURG</i> ^[1] - 2:10 <i>three</i> ^[7] - 23:9, 23:15, 23:16, 23:19, 24:7, 26:4, 31:17 <i>throw</i> ^[1] - 25:13 <i>tight</i> ^[3] - 6:20, 19:16, 20:19 <i>timing</i> ^[2] - 24:6, 24:10 <i>today</i> ^[9] - 3:8, 4:13, 8:22, 11:4, 12:7, 17:23, 26:21, 27:12, 31:4 <i>together</i> ^[1] - 11:15 <i>total</i> ^[1] - 23:16 <i>totally</i> ^[1] - 15:13 <i>towards</i> ^[1] - 17:2 <i>track</i> ^[2] - 15:15, 22:14 <i>transcript</i> ^[3] - 1:25, 25:8, 32:6 <i>transcription</i> ^[1] - 1:25 <i>transmission</i> ^[1] - 10:11</p>	<p><i>transmit</i> ^[2] - 8:9, 8:12 <i>transmitted</i> ^[1] - 8:11 <i>TRAURIG</i> ^[1] - 2:6 <i>Traurig</i> ^[2] - 12:6, 27:18 <i>treat</i> ^[3] - 6:10, 21:14, 22:12 <i>treated</i> ^[1] - 20:21 <i>trial</i> ^[1] - 17:2 <i>trials</i> ^[1] - 31:18 <i>tried</i> ^[3] - 15:9, 18:18 <i>true</i> ^[2] - 21:11, 23:5 <i>try</i> ^[2] - 22:20, 26:14 <i>trying</i> ^[1] - 16:11 <i>two</i> ^[17] - 4:1, 4:2, 4:10, 5:14, 6:13, 7:6, 7:7, 12:1, 13:10, 13:12, 13:17, 13:22, 17:13, 19:7, 21:5, 28:21 <i>two-day</i> ^[2] - 4:2, 5:14</p>
				<p>U</p>
				<p><i>ULMER</i> ^[1] - 2:17 <i>unavoidable</i> ^[1] - 6:19 <i>under</i> ^[9] - 5:9, 6:23, 7:5, 19:15, 20:20, 23:21, 23:23, 24:24, 25:14 <i>understood</i> ^[1] - 21:18 <i>UNITED</i> ^[2] - 1:2, 1:10 <i>unless</i> ^[1] - 9:10 <i>unmanageable</i> ^[1] - 19:12 <i>unusual</i> ^[1] - 12:14 <i>up</i> ^[8] - 3:11, 13:9, 15:10, 24:9, 24:25, 26:19, 31:7, 31:8 <i>update</i> ^[2] - 29:18, 30:8 <i>USA</i> ^[1] - 2:9</p>
				<p>V</p>
				<p><i>VALSARTAN</i> ^[1] - 1:4 <i>Vanaskie</i> ^[2] - 12:5, 30:17 <i>VANASKIE</i> ^[1] - 1:9 <i>various</i> ^[1] - 15:10 <i>Various</i> ^[1] - 4:16 <i>vehemently</i> ^[1] - 14:7 <i>Velma</i> ^[1] - 29:14 <i>versus</i> ^[2] - 8:4, 9:6 <i>Via</i> ^[1] - 1:6 <i>VIA</i> ^[1] - 3:1 <i>Victoria</i> ^[1] - 12:6 <i>VICTORIA</i> ^[1] - 2:6 <i>view</i> ^[1] - 10:7</p>

Vine ^[1] - 2:18
voluntarily ^[1] - 18:15

W

W-R-I-G-H-T ^[1] - 29:15
waiver ^[1] - 5:1
WALLACK ^[1] - 2:14
wants ^[4] - 11:2, 14:4, 18:2, 31:1
Washington ^[1] - 26:21
waterfront ^[1] - 19:23
Wednesday ^[2] - 1:7, 10:15
week ^[4] - 8:7, 8:22, 25:3, 31:10
week's ^[1] - 25:3
weeks ^[1] - 13:11
whereas ^[1] - 22:1
wholesaler ^[3] - 10:22, 11:20, 11:22
wholly ^[1] - 15:7
willingly ^[1] - 18:14
wishes ^[1] - 6:3
withdrawn ^[1] - 9:8
withheld ^[1] - 7:5
witness ^[3] - 19:20, 19:24, 21:16
witnesses ^[2] - 19:11, 21:5
Wolf ^[1] - 12:3
word ^[1] - 14:7
Worikeena ^[1] - 28:16
WORIKEENA ^[1] - 28:17
wrath ^[1] - 26:3
Wright ^[1] - 29:14
writing ^[1] - 28:10

Y

Yankee ^[1] - 31:8
year ^[1] - 14:13
yesterday's ^[1] - 27:13
York ^[1] - 2:16

Z

ZHP ^[13] - 2:5, 4:8, 4:13, 4:15, 4:18, 4:23, 5:5, 5:7, 5:13, 5:18, 5:19, 6:4, 6:24
ZHP's ^[1] - 5:20